

EXHIBIT J

JAMES TERTIN
T. AHERN vs SIG SAUER, IC.

January 23, 2024

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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THOMAS AHERN,

Plaintiff,

v.

Case No.
21-cv-11007-DJC

SIG SAUER, INC. and CITY OF CAMBRIDGE.,

Defendants.
-----x

January 23rd, 2024
1:00 p.m.

Videotaped, Video Teleconference Deposition of
Expert Witness, JAMES TERTIN, taken by all parties,
pursuant to Notice, via eLitigate Video
Conferencing, before Sabine Faustin, a Shorthand
Reporter and Notary Public within and for the State
of New York.

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2 done on Mr. Ahern's matter?

3 A Just reading his Complaint and the
4 other documents pertaining to his case.

5 Q Okay, so would it be fair to say then
6 that the reason that you have changed your opinion
7 that the P320 pistol can discharge without a full
8 trigger pull is because you read allegations in the
9 Complaint and other documents provided to you
10 pertaining to Mr. Ahern's allegations?

11 THE WITNESS: Could you say that
12 again?

13 Your voice kind of fades in and out.

14 MS. DENNISON: Sure. I'm sorry, I
15 moved away from the phone.

16 Q All right, so since December 15th,
17 you've read Mr. Ahern's Complaint in this matter;
18 is that correct?

19 A Yes.

20 Q What else have you reviewed that has
21 caused you to change your opinion, besides Mr.
22 Ahern's complaint?

23 A Well, I reviewed Mr. Toner's expert
24 report, and I referred to Derek Watkins' expert
25 report, and I referred to Mr. Hick's expert report.

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2 Q Okay, um, now, you say that you
3 reviewed Mr. Toner's expert report. Mr. Toner has
4 not produced an expert report in this matter, so
5 what report are you referencing?

6 A Uh, Staltowski.

7 Q Was there anything in Mr. Toner's
8 report in Staltowski that caused you to change your
9 opinion -- you opinion that the P320 cannot
10 discharge without a full trigger pull?

11 A He talked about the sear and the
12 striker mating surfaces being MIMed, and I believe
13 I mentioned that in my very first expert report
14 that I wrote, and I agree with him that because
15 they're not secondarily machined -- and we call
16 that qualified in our industry; qualifying they're
17 machined to a specific dimension and a specific
18 surface finish. And since that hasn't happened,
19 they don't make perfectly, and they're both
20 spring-loaded, so jostling could potentially cause
21 that firearm to discharge without a pull.

22 Q Are you claiming Mr. Toner said that?

23 THE WITNESS: Pardon?

24 Q Are you saying that that is something
25 that Mr. Toner put in an expert report?

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2 A No oh, no, I'm sorry, that's -- Mr.
3 Toner is the SIG engineer; that would be Mr. Hick.

4 Q Now Mr. Hick stated that in his report
5 in the Staltowski versus SIG Sauer matter, correct?

6 A Yes.

7 Q And I deposed you in the Staltowski
8 versus SIG Sauer matter, correct?

9 A Yes.

10 Q And you told me in Staltowski versus
11 SIG Sauer that the P320 pistol cannot discharge
12 without a full trigger pull; do you remember that?

13 A Yes.

14 Q And since that deposition in
15 Staltowski versus SIG Sauer, I have deposed you an
16 additional seven cases, so a total of eight cases
17 before we got here today. And in all eight of
18 those cases you told me that P320 cannot discharge
19 without a trigger pull, do you recall that?

20 A Yes.

21 MS. DENNISON: Okay, so what I'm
22 trying to get at is why now, today, you are
23 telling me that the P320 pistol can discharge
24 with a trigger pull.

25 Q So what -- so you told me that you

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2 MS. DENNISON: What I'm asking is:

3 Q How can they become separated without
4 a trigger pull; how does the striker foot and sear
5 disengage without a trigger pull?

6 MR. LEVITT: Objection asked and
7 answered.

8 A It would have to be through some sort
9 of jostling, dumping, moving; something like that.

10 Q And when they become disengaged how
11 does that happen; does the striker foot move up;
12 does the sear move down; do they move together; how
13 does that physically work?

14 A The striker can't move up; that's
15 encased within the slide. So the sear would have
16 to move down.

17 Q What would cause the sear to move
18 down?

19 A Jostling, bumping, grinding,
20 day-to-day --

21 Q Now --

22 MR. LEVITT: Again, Kristen, if you --
23 I'm not sure he's quite done with some of his
24 questions -- with some of his answers before
25 you start with your questions.

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2 encapsulated within the slide.

3 Q So what can cause the sear to move
4 down?

5 A Um, we talked about this previously.
6 It could be bumping, jostling, moving, um,
7 day-to-day motion. It's possible for that
8 sear/striker that are unqualified and rough to
9 slightly start to separate, and then at some point
10 it will release.

11 And it isn't fair to say that one
12 thing is going to cause it to fire. I suggest
13 that -- that these five things, in any combination,
14 could cause that pistol to fire, not any one thing.

15 Q Okay, but don't you need the three
16 pounds of force that you measured to make that sear
17 move down?

18 A Yes, I measured that.

19 Q Okay, and so when you talked about the
20 jostling, the bumping and the day-to-day movement,
21 wouldn't that require three pounds of force to push
22 that sear down?

23 A Yes. Theoretically, yes.

24 Q Well, not -- I mean, you say
25 theoretically but that's quantifiable, that's

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2 Q How are they wrong?

3 A The sear is not even close to the
4 actual sear in the 320. Those aren't actual
5 drawings from State; those are something that
6 somebody made up.

7 Q Okay, so we talked about the small
8 sear engagement; we talked about the non-qualified
9 MIMed parts; the spring part tension between the
10 sear and the striker, what is your criticism on
11 that?

12 THE WITNESS: Did I what?

13 MS. DENNISON: Sorry, I moved away
14 from my phone, which I tend to do. I forgot
15 I'm on my phone.

16 Q What is your criticism about the
17 spring charged tension between the sear and the
18 striker on the P320?

19 A Again, the sear is spring loaded, so
20 it can easily move out of the way, without any
21 motion on the trigger or trigger part; that's
22 really -- that's really unique to the 320.

23 Q How is it going to move out of the way
24 from the spring charge?

25 A Jostling, bumping, day-to-day use,

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2 carrying, sitting, moving, that's what could cause
3 it to move away, and Mr. Watkins' contradicts that,
4 saying that they reclaim their position, and I will
5 test that.

6 Q Once you test that, if you find that
7 regains, will you change your opinion on that
8 matter?

9 A Hmm, I don't know about that. I --
10 probably not. I don't have a full sampling of
11 guns. Um, I have a few here that I can test it on.
12 I might.

13 Q Well, if you tested it, and you found
14 that it regained, wouldn't you have to change your
15 opinion?

16 MR. LEVITT: Which opinion are we
17 talking about?

18 Sorry Kristen, it's not here.

19 MS. DENNISON: No problem. The spring
20 charge tension between the sear and the
21 striker.

22 Q So if you -- either you're critical of
23 that Mr. Tertin, because you believe that it can
24 move away and it won't regain, so if you tested it
25 and you found that it regained, wouldn't you have

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2 MS. DENNISON: Okay, are we ready to
3 go to.

4 MR. LEVITT: Ready on this end.

5 THE VIDEOGRAPHER: All set?

6 Going back on the record at 3:20 p.m.
7 Central time.

8 Q Mr. Tertin, if we accept your opinions
9 as true, that the sear and the striker became
10 disengaged in Mr. Ahern's event, based on your
11 testing something had to pull his trigger partially
12 back to disengage the striker safety lock; is that
13 right?

14 A Hmm, uh, two things, yes, in an to
15 your question; or the striker safety lock wasn't
16 functioning. It would have been one of those two
17 things or a combination.

18 Q And you have no evidence that Mr.
19 Ahern's striker safety lock was not functioning,
20 right?

21 A That's correct.

22 Q So for you to be able to say that Mr.
23 Ahern's pistol discharged without a trigger pull,
24 something had to disengage the striker safety lock,
25 right?

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2 A Yes.

3 Q Are there other alternatives design,
4 other than redesigning the sear, that would render
5 the P320 safe in your view?

6 A Uh, yes. A well designed manual
7 safety would render that gun safe, and when I say
8 well designed -- I mentioned this earlier -- a
9 safety that blocked the sear or striker or both, or
10 disengages the sear striker relationship, that's an
11 effective manual safety.

12 Q Any other alternative designs that
13 would render the P320 safe?

14 A Um, tab trigger would render it --
15 significantly safer than it currently is, as a
16 single action pistol.

17 Q And I tab trigger would increase the
18 safety of the firearm used as the drop fires,
19 correct?

20 A Drop fire --

21 MS. DENNISON: Objection to form.

22 A (Continuing) -- Drop fire is one, and
23 a simple brushing motion on the trigger is the
24 other. A simple brushing motion won't fire a tab
25 trigger. The finger has to be squarely on it to

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2 your mind about the fundamental nature of the
3 incident and what happened?

4 A No.

5 Q Your -- as discussed throughout the
6 day today, your opinion regarding the
7 susceptibility of the P320 to fire with a trigger
8 pull has evolved; is that correct?

9 A Yes, that's correct.

10 Q Um, and is -- you mentioned five
11 factors that in your view, I think you said a
12 combination of those five factors makes the P320
13 susceptible to a discharge without a trigger pull;
14 is that correct?

15 A Yes.

16 MS. DENNISON: Objection to form.

17 Q And what were those five factors
18 again?

19 A Um, it was the small -- a small sear
20 engagement; non-qualified or metal injection
21 molded, MIM parts; spring charge connection between
22 the striker and the sear; a non--- no effectively
23 designed external safety; um, and lastly, it was --
24 it's a single action pistol, uh, with a very small
25 trigger pull in order to fire it.

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2 And I think I added after that, if
3 it -- if it had a tab safety -- this was under the
4 single action heading -- if it had a tab trigger, I
5 mean, it would be significantly more safe than just
6 a bare trigger.

7 Q And is part of your evolution with
8 regard to your opinion as to the susceptibility of
9 the P320 to discharge without a trigger pull, based
10 on your considering and analyzing those five
11 factors as a combination?

12 MS. DENNISON: Objection to form.

13 A Yes.

14 Q Can you explain why that is?

15 A Well, those five factors can work
16 together in any -- any combination. I'm not saying
17 that one or the other will cause that gun to
18 inadvertently discharge.

19 But you might take point 1 and point 4
20 working against each other, or together; point 1, 2
21 and 3 working together or against each other, but
22 it's a combination of those five things that can
23 definitely cause that pistol to inadvertently fire.

24 Q And why is it that your opinion has
25 evolved now to the focus on those five factors and

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2 combinations?

3 A Well, I've mentioned all five of those
4 in past, so -- so none of those five are new.
5 However, coupled with my testing and Mr. Ahern's
6 Complaint and deposition, I now believe his gun did
7 fire without a trigger pull.

8 Q So your testing and his allegations
9 caused you to go back and to reconsider how those
10 five factors could interact with each other?

11 A Yes, correct.

12 Q And based on that reconsideration of
13 how those five factors could interact with each
14 other, your opinion evolved to the point where you
15 determined that the P320 could fire without a
16 trigger pull; is that accurate?

17 MS. DENNISON: Form.

18 A Yes, that's accurate.

19 Q Do you have an opinion as to whether
20 the P320 is defectively designed?

21 A Yes, I believe it is defectively
22 designed and -- from day one, because it's a -- I
23 mentioned in earlier reports, it is the only single
24 action pistol designed with no type of external
25 safety whatsoever.

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2 Q Is your opinion that the P320 is
3 defectively designed based on the five factors that
4 you have discussed today?

5 A Absolutely, yes.

6 Q Do you have a measurement of that
7 actual -- of the actual engagement, with respect to
8 the sear and the striker?

9 A Yes, on all the pistols I've looked
10 at, it's between 38 and 41 thousandths.

11 Q Is that significant to you?

12 A Yes, that's significant; that's --
13 that's a minimal trigger pull for a tootie (sic)
14 gun like this; that's a very, very, small trigger
15 pull, with about slightly under four to five and a
16 half pounds of pull to disengage the sear striker.

17 Q And do you have an opinion --

18 A (Continuing) -- what that translates to
19 is an excellent trigger for an average person who
20 buys that gun.

21 And what I mean by excellent trigger
22 is I mean it feels really good, and it's easy to
23 shoot, because the trigger is light, with minimal
24 Crete (sic).

25 Q Do you have an opinion as to whether

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2 single action pistol makes that gun dangerous.

3 Q And the non-qualified parts you're
4 mentioning, those would be -- is -- am I correct
5 that those would be, in theory, different in every
6 firearm, or perhaps every batch of firearms; is
7 that correct?

8 A Yes, they could be. They're molded
9 and they're not -- there's no secondary operations;
10 they're not machined or drawn to a specific
11 dimension, or surface finish.

12 Q So what does that mean, in terms of,
13 um -- in terms of their -- whether they are
14 identical in every single firearm manufactured by
15 by P3 -- by SIG Sauer?

16 A Well, if they're not identical; if one
17 of them is bent or warped slightly, then that
18 sear/striker relationship could be greatly
19 diminished.

20 Um, you understand the MIM process
21 That --

22 Q Why don't you explain it to us?

23 A It's somewhat extensive. And I'm not
24 saying the MIM process is bad. It's a good way to
25 get cheap parts.

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2 Q And that would be another -- well,
3 that would be another alternative to try to make
4 this firearm safer; is that correct?

5 A That's correct.

6 MS. DENNISON: Objection to form.

7 Q You -- you mentioned that the sear,
8 um, can become disengaged from the striker; I think
9 you said based on sort of day-to-day activities
10 could make that already tenuous engagement more
11 tenuous; is that correct?

12 MS. DENNISON: Objection to form.

13 A Yes.

14 Q And what sort of activities did you
15 have in mind when you said that?

16 A Oh, I mentioned, uh, walking,
17 jostling, bumping, running; getting in and out of a
18 vehicle or a squad car; um, sitting down, standing
19 up, having coffee; just day-to-day movements.

20 Q And, um, can you describe for us how
21 that would make that engagement more tenuous?

22 A It is possible that through that
23 movement and jostling, that the sear, which is held
24 vertically, via two springs and the striker, which
25 is held horizontally with one spring, that hook

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2 connection could slightly roll, to the point that
3 it was barely, barely connected.

4 And then at some point it may let go;
5 it may let go on its own; it may let go when it's
6 slightly moved or bumped or jostled or anything.

7 We talked about that, and that's the
8 test that I'm going to do, to see if that sear --
9 striker will reengage fully after the sear is
10 partially depressed.

11 Q So vibration could, um -- is it --
12 would vibration be a factor in making that
13 engagement more tenuous?

14 A Well, in my opinion vibration would be
15 part of it, but I would think bumping and jostling
16 would be more important.

17 Q How about if a firearm was dropped?

18 A That would be serious. That could
19 cause a sudden dislodge of the parts.

20 Q Could it also cause a further
21 disengagement, but not -- not all the way?

22 A Yes, it could.

23 MS. DENNISON: Objection to form.

24 Q And what would the -- what would the
25 ramifications of that be?

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2 A Well, then, uh, the -- let's say that
3 happened; and the sear damage -- if the gun was
4 dropped, let's say the sear then was half or
5 two-thirds engaged, or unengaged, at that point,
6 you only have maybe 15 or 20 thousandths of sear
7 engagement left; that translates to two things: one
8 a very, very light trigger, or continuation of
9 bumping, jostling, standing, sitting or getting in
10 and out of a vehicle, could cause that remaining
11 sear engagement to disappear and the gun to fire.

12 Q What about the striker safety lock?

13 A The striker safety lock, on the gun I
14 have here and tested, work. It's a mechanical
15 part. It also has a spring. The one I have has a
16 spring; I don't know if they all have.

17 But if the striker safety lock was
18 functioning and the trigger was not moved, the gun
19 should not fire.

20 Q How does the striker safety lock work?

21 A Uh, it's a very small stamp lever on
22 the right side of the striker, as you're looking
23 from the rear of the gun forward.

24 And as the trigger is depressed, it --
25 it's in an up position at all times, so that if the